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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.         | CONFIRMATION NO. |
|---|-------------|----------------------|-----------------------------|------------------|
| 09/844,843  | 04/27/2001  | Claudiu D. Pruteanu  | 20010142.ORI                | 2768             |
| 23595 7590 03/07/2007<br>NIKOLAI & MERSEREAU, P.A.<br>900 SECOND AVENUE SOUTH<br>SUITE 820<br>MINNEAPOLIS, MN 55402 |             |                      | EXAMINER<br>KEENAN, JAMES W |                  |
|   |             |                      | ART UNIT                    | PAPER NUMBER     |
|   |             |                      | 3652                        |                  |

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE  | DELIVERY MODE |
|--|------------|---------------|
| 3 MONTHS                               | 03/07/2007 | PAPER         |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

# Office Action Summary

Application No.

09/844,843

Applicant(s)

PRUTEANU ET AL.

Examiner

James Keenan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2007.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 51-53, 55-57, 65 and 66 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 51-53, 55-57, 65 and 66 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

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1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/20/07 has been entered.

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 51-53, 55-57, and 65-66 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 65 contains the limitation that the shape of the arm member is curved "such that a container does not exceed the height of the truck body during a lift and dump operation". There is no basis for this in the disclosure as originally filed. Although applicant alleges that figures 1 and 2 show the low profile of the lift and dump mechanism when lifted, those figures do not even show the arm carrying a container, much less doing so during a lift and dump operation. While the specification admittedly does provide that the shape of the arm member reduces the height to which a container is lifted, this does not necessarily

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mean that it would do so to the extent now set forth in claim 65, nor do the drawings portray the arm member as possessing such a feature.

Applicant further argues that the marked-up copies of figures 1 and 2, offered as exhibits A and B, show the extreme height position of the lift and dump mechanism as being within the side opening of the truck body and concludes that since the container must be emptied through the side opening, the claim limitations are inherently met. This is unpersuasive, because, not only is it unclear where this alleged "extreme height" position of the lift and dump mechanism comes from, but even if this is accepted as the extreme height of the lift and dump arm, it is not necessarily the extreme height of the container. Applicant is not claiming any particular container. It is certainly conceivable that containers of varying size could be picked up by the arm. There is simply no indication from the originally filed disclosure that any container capable of being picked up by the lift and dump arm would not necessarily exceed the height of the truck body during a lift and dump operation.

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the physical relationship between the arm member and the vehicle body such that a container does not exceed the height of the truck body during a lift and dump operation must be shown or the feature(s) canceled from the claim(s). **No new matter should be entered.**

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended

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replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 51, 55, 56, 65 and 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christenson in view of Brandt and Sizemore et al (all previously cited).

This rejection is set forth in prior Office action, mailed 4/22/05, paragraph 4, and repeated in the 9/16/05, 2/28/06, 6/22/06, and 11/20/06 Office actions. Particular

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attention is directed to paragraphs 4 and 5 of the Office action mailed 6/22/06, and paragraph 5 of the Office action mailed 11/20/06.

The limitation of a side loading refuse vehicle with a body having a dropped bottom charging hopper is clearly disclosed by the base reference Christenson. Although not explicitly shown, this reference also appears to have an arm member shaped and sized such that a container does not exceed the height of the truck body during a lift and dump operation, to whatever extent this limitation may be given patentable weight.

The newly recited limitation that the container can be emptied through a side opening of the truck body is also clearly disclosed by Christenson (e.g., opening 120, figs. 5-6).

7. Claims 52, 53, and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christenson in view of Brandt and Sizemore et al, as applied to claims 51, 55, 56, 65 and 66 above, and further in view of Duell et al (previously cited).

This rejection is set forth in prior Office action, mailed 4/22/05, paragraph 5, and repeated in the 9/16/05, 2/28/06, 6/22/06, and 11/20/06 Office actions.

8. Applicant's arguments filed 2/20/07 have been fully considered but they are not persuasive.

Applicant's comments concerning the reference combination are generic and conclusory in nature, and do not raise any new points of argument. Therefore, the

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examiner's comments set forth in the previous Office actions are reiterated without further comment.

9. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

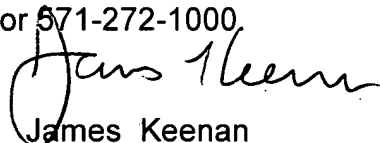
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Keenan whose telephone number is 571-272-6925. The examiner can normally be reached on (schedule varies).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Mackey can be reached on 571-272-6916. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



James Keenan  
Primary Examiner  
Art Unit 3652

jwk  
3/01/07